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DEPARTMENT OF STATE

ASSISTANT SECRETARY

December 9, 1958

10,547

RM/R

To: The Secretary  
Through: G - Mr. Murphy  
From: EUR - Mr. Merchant  
Subject: Draft Reply to Soviet Note Inquiring as to Exactly What Agreements the Soviets Desire to Declare Null and Void

762.00/12-958

CS/TJ

This draft, prepared in accordance with the Secretary's request, seems to me an effective and ingenious legal exercise. Parenthetically I believe that the relationship of the German administration up to the Oder-Neisse line and the Potsdam Agreement might be pointed up by a sentence possibly at the end of the second full paragraph on page 2.

On the tactics, however, I do not think that this note should be sent as our first rejoinder to the Soviet note of November 27. I think its contents or much of them might usefully be included in our reply and in any event its contents would be extremely valuable debating material in an actual negotiation with the Soviets if such eventuates.

My objection to using the note, however, as our first response to the Soviet note, distracts attention from our basic position which I take to be that we will not abandon the people of West Berlin and that we will maintain all our rights. We don't want that picture fogged for the Germans or world opinion by a legalistic reaction which leaves our basic position unstated. Moreover I think it would be subject to an effective propaganda response by the Russians to the effect that they weren't interested in lawyers' arguments but in acceptance of their statesmanlike proposal to rid the people of West Berlin of foreign occupation forces still standing there more than thirteen years after the war.

Accordingly I recommend that we keep this in our briefcase but not utilize it as our initial response to the Soviet note.

EUR:LTMerchant:mt

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By LV  
DATE 11/27/89

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DRAFT REPLY TO SOVIET NOTE

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The Government of the United States of America acknowledges the receipt of the note of the Government of the Union of Soviet Socialist Republics (No. 82/OSA) dated November 27, 1958.

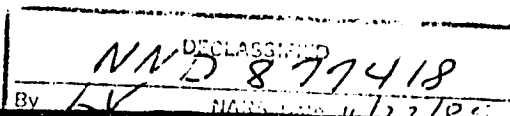
The note is being studied with a view to formulating a reply. A certain lack of clarity in the note as regards the intention of the Soviet Government is impeding the preparation of the reply. In particular, the note contains the following language:

"The Soviet Government can no longer consider itself bound by that part of the Allied agreements on Germany that has assumed an inequitable character and is being used for the purpose of maintaining the occupation regime in West Berlin and interfering in the internal affairs of the GDR.

"In this connection, the Government of the USSR hereby notifies the United States Government that the Soviet Union regards as null and void the 'Protocol of the Agreement between the Governments of the Union of Soviet Socialist Republics, the United States of America, and the United Kingdom on the zones of occupation in Germany and on the administration of Greater Berlin,' of September 12, 1944, and the related supplementary agreements, including the agreement on the control machinery in Germany, concluded between the

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governments of the USSR, the USA, Great Britain, and France on May 1, 1945, i.e., the agreements that were intended to be in effect during the first years after the capitulation of Germany."

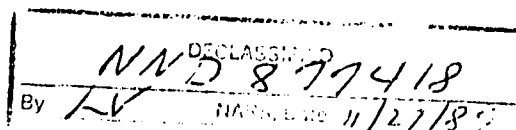
The question is raised as to precisely what agreements or parts of agreements the Soviet Government considers "null and void."

The Soviet Government asserts a claim to denounce certain agreements on the ground that the Government of the United States has allegedly violated the Potsdam Protocol. Does the Soviet Government include the Potsdam Protocol among the agreements which it regards as "null and void"? In this connection, the Government of the United States notes that Part II of the Protocol concerns principles to govern the treatment of Germany "in the initial control period", which could bring Part II within the scope of the phrase in the Soviet note which refers to "agreements that were intended to be in effect during the first years after the capitulation of Germany."

Clarification is also requested whether the Soviet note is to be understood as declaring "null and void" the Declaration issued by the Allied Representatives Regarding the Defeat of Germany dated June 5, 1945. In this agreement supreme authority in Germany was assumed by the Four Powers.

Another agreement on which the position of the Soviet Government is unclear is the one embodied in the exchange of letters between President Truman and Marshal Stalin on June 14 and June 18, 1945. It will be recalled that upon the cessation of hostilities United States forces occupied most of Saxony and Thuringia. Both these areas fell within the Soviet Zone of Occupation under the Agreement on the Zones of Occupation in Germany and

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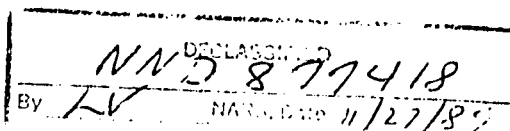
on the Administration of Greater Berlin. United States forces were withdrawn in accordance with the arrangements made in the exchange of letters, which also included "provision of free access by air, road and rail from Frankfurt and Bremen to Berlin for United States forces". If the Soviet Government considers the arrangements in the exchange of letters, as well as the agreements on zones of Occupation "null and void", serious legal considerations are raised, including the right of Soviet forces to remain in the areas from which the United States troops were withdrawn.

There are, moreover, a substantial number of existing agreements and arrangements regarding the manner in which the United States right of free access to Berlin is exercised. These agreements and arrangements were worked out through the quadripartite machinery in Germany and provide for the use of specific air corridors, rail lines and roads. These agreements and arrangements were fully confirmed by the Soviet Union in New York on May 4, 1949, when, after the failure of its attempt to force the Western Powers out of Berlin by starving the people of that city, it agreed:

"1. All the restrictions imposed since March 1, 1948, by the Government of the USSR on communications, transportation and trade between Berlin and the Western Zones of Germany and between the Eastern Zone and the Western Zones will be removed on May 12, 1949."

This agreement was confirmed and broadened by agreement of the Council of Foreign Ministers which thereafter convened in Paris and agreed as follows:

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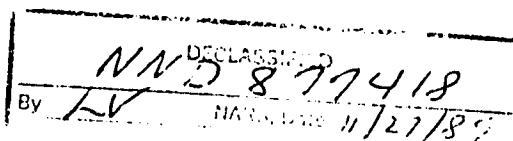
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"5. The Governments of France, the Union of Soviet Socialist Republics, the United Kingdom and the United States agree that the New York Agreement of May 4th, 1949, shall be maintained. Moreover, in order to promote further the aims set forth in the preceding paragraphs, and in order to improve and supplement this and other arrangements and agreements as regards the movement of persons and goods and communications between the Eastern Zone and the Western Zones and between the Zones and Berlin, and also in regard to transit, the Occupation Authorities, each in his own Zone, will have an obligation to take the measures necessary to ensure the normal functioning and utilisation of rail, water and road transport for such movement of persons and goods, and such communications by post, telephone and telegram."

In view of the fact that these agreements were entered into four years after the cessation of hostilities, they obviously are not agreements "intended to be in effect during the first years after the capitulation of Germany." Does the Soviet Government nevertheless intend by its note and prospective actions to reject the obligations reaffirmed by these agreements?

Finally, the Government of the United States continues to regard the Soviet Union as bound by the Directive of the Heads of Government of the Four Powers to the Foreign Ministers, of July 23, 1955, in which the Soviet Union, recognizing its common responsibility with the other powers for the settlement of the German question and the reunification of Germany, agreed "that the settlement of the German question and the reunification of Germany

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by means of free elections shall be carried out in conformity with the national interests of the German people and the interests of European security." The Government of the United States trusts that the discussion of the subject of German reunification in the Soviet note is not to be read as a repudiation of the Soviet commitment at Geneva.

The Government of the United States looks forward to a response from the Government of the Soviet Union making more precise which agreements and parts of agreements the Soviet Government asserts to be "null and void".

Department of State,

Washington,

L/EUR:RDKearney:  
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